

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

MICHAEL B. WADSWORTH,

Petitioner,

vs.

BRIAN E. WILLIAMS, et al.,

Respondents.

Case No. 2:13-cv-00401-GMN-GWF

**ORDER**

The court granted in part respondents' motion to dismiss (#34), finding that ground 6(D), 6(G), and 7(B) of the second amended petition (#26) were not exhausted in state court. The court also found the following parts of ground 2 of the second amended petition to be unexhausted: That the trial court erred in denying petitioner's attempts to admit into evidence the police statements of Cisco Neal and Michael Griner to impeach the testimony of Detective Fogarty. The court directed petitioner to inform the court what he wanted to do with these unexhausted grounds. Order (#46). Petitioner has filed a motion for partial dismissal (#49), and he states in an attached declaration that he will abandon the unexhausted grounds.

The court found that ground 1(B) was procedurally defaulted. Ground 1(B) is a claim that the evidence was insufficient to establish premeditation and deliberation, which are elements of first-degree murder, the crime for which petitioner was convicted. To try to establish cause to excuse the procedural default, petitioner argued that appellate counsel provided ineffective assistance because appellate counsel did not raise on direct appeal the issue contained in ground 1(B). The court noted that that argument also is the unexhausted ground 7(B), and the court noted

1 that an unexhausted claim itself cannot be cause to excuse a procedural default. The court directed  
2 petitioner to decide what to do with ground 7(B), and then the court would decide what to do with  
3 ground 1(B). Order, at 9 (#46). Petitioner having decided to dismiss ground 7(B), there is no cause  
4 to excuse the procedural default of ground 1(B), and the court dismisses ground 1(B).

5 **IT IS THEREFORE ORDERED** that petitioner's motion for partial dismissal (#49) is  
6 **GRANTED.**

7 **IT IS FURTHER ORDERED** that grounds 6(D), 6(G), and ground 7(B) are **DISMISSED**  
8 from this action.

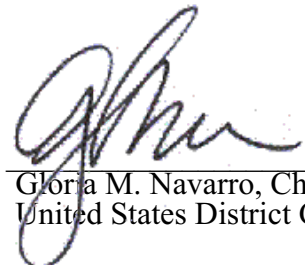
9 **IT IS FURTHER ORDERED** that the parts of ground 2, described above in the first  
10 paragraph of this order, are **DISMISSED** from this action.

11 **IT IS FURTHER ORDERED** that ground 1(B) is **DISMISSED** with prejudice from this  
12 action as procedurally defaulted.

13 **IT IS FURTHER ORDERED** that respondents shall have forty-five (45) days from the  
14 date of entry of this order to file and serve an answer, which shall comply with Rule 5 of the Rules  
15 Governing Section 2254 Cases in the United States District Courts. **Petitioner shall have forty-**  
16 **five (45) days from the date on which the answer is served to file a reply.**

17 **DATED** this 5th day of June, 2015.

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Gloria M. Navarro, Chief Judge  
United States District Court